



CHRIS CHRISTIE
Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
State Board of Veterinary Medical Examiners
124 Halsey Street, 6th Floor, Newark, NJ 07102



RECORDED and FILED by
NEW JERSEY STATE BOARD OF
VETERINARY MEDICAL EXAMINERS
this date of: 4-19-2010
PAULA T. BOW
Attorney General

KIM GUADAGNO
Lt. Governor

April 07, 2010

SHARON M. JOYCE
Acting Director

BY CERTIFIED AND REGULAR MAIL

Mailing Address:
P.O. Box 45020
Newark, NJ 07101
(973) 504-6500

Delfin Tumibay, D.V.M.
Amity Animal Clinic
211 Washington Avenue
Belleville, New Jersey 07109

Re: **I/M/O DELFIN TUMIBAY, D.V.M.**
Complaint Number: 08-080

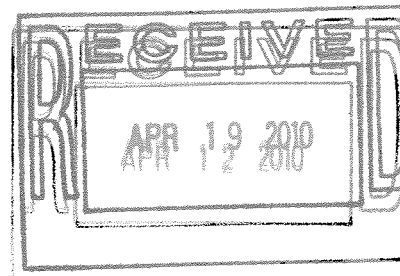
Offer of Settlement in Lieu of Disciplinary Proceeding

Dear Dr. Tumibay,

This letter is to advise you that the New Jersey State Board of Veterinary Medical Examiners ("Board") has had an opportunity to review a consumer complaint, filed by Maria Villabón, concerning the professional conduct you rendered at the Amity Animal Clinic ("Clinic"). The complaint alleges, among other contentions, that you engaged in negligence and professional misconduct in the care and treatment you provided to seven (7) year old dog, "Bebe" Villabón, on or about May 2008.

Specifically, the information reviewed by the Board included, but is not limited to, the following documents:

1. A complaint, filed on or about August 26, 2008, by Maria Villabón, as well as any and all attachments and exhibits;
2. An undated letter, received in the Board office in or about September 2008, from Delfin Tumibay, D.V.M., as well as any and all attachments and exhibits; and
3. Medical records of "Bebe" Villabón.



Upon review of all available information, the Board has found that probable cause exists to support a finding that you failed to comply with the provisions of the Veterinary Medical Practice Act and its accompanying regulations which are administered by the Board. Specifically, the Board found you violated N.J.S.A. 45:1-21(h), in that you failed to keep adequate medical records contrary to N.J.A.C. 13:44-4.9.

The Board's review of this matter revealed that Bebe was presented to you on or about May 23, 2008 with complaints of vomiting that lasted over two weeks. After detecting a suspected foreign body in Bebe's stomach via palpation, you recommended to the owner that an exploratory laparotomy be performed in order to locate the foreign body. This surgery was performed on May 24, 2008 and a plastic cylindrical mass was removed from Bebe's stomach. You maintained, in your letter to the Board, that Bebe's recovery was uneventful, and that on May 25, 2008, the day after the surgery, Bebe was fine and active and you so advised the owner of this status.

On May 26, 2008 at approximately 8:30 a.m., while you were on your way to the Clinic, the owner called you to inquire about Bebe and you advised her that the dog could go home that day. However, on your arrival at the Clinic, you discovered that Bebe had died and so notified the owner as to Bebe's death.

The Board, in its review of this complaint, has concluded that there is insufficient evidence to initiate any formal disciplinary action against you relative to the veterinary care provided to Bebe. However, the Board, in its review of this matter, had the opportunity to review the patient records you submitted for review. The Board has concluded that you violated its patient record regulation by failing to create and maintain medical records for Bebe that comply with its regulation, in violation of N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.9(a).

Specifically, the Board found that your records failed to contain important and necessary information relative to the veterinary services provided to Bebe as required by N.J.A.C. 13:44-4.9. Namely, the Board concluded that the records did not contain the following: 1) the name of the facility and the identification of the treating licensee; 2) tests ordered or performed and the results thereof, in that there was neither a description of the radiographs performed nor a notation of the views or findings; 3) the treatment or treatment plan prescribed, including a specific notation of any medications or modalities prescribed, namely, no surgery report or surgery notes and no notation of the amount/dosages of medications utilized and/or administered; and 4) such other notes as to provide a clear statement of the patient's condition and the veterinary evaluation and response, in that there was no patient report or surgery notes. licensee or agent making the entry in the patient records.

At this juncture, the Board has determined that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that determination, however, the Board has decided that it will first offer you an opportunity to settle this matter, thereby avoiding the initiation of disciplinary proceedings, should you consent to:

1. Cease and desist from violations of the patient records rule, namely N.J.A.C. 13:44-4.9(a); and
2. Pay a civil penalty in the amount of **\$1,000.00** for record keeping violations, to be paid immediately upon your signing of the acknowledgment at the bottom of this letter for your violations of N.J.S.A. 45:1-21(h) and N.J.A.C. 13:44-4.9(a).

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. In such event, this letter will be a matter of public record.

In the event that you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's Office for the initiation of appropriate disciplinary action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted, the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event that formal charges are filed, the Board may assess civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order requiring you to reimburse certain monies and/or requiring you to pay costs incurred by the Board. Should you have any questions, concerning this letter or the settlement offer herein, I suggest you contact Deputy Attorney General Olga E. Bradford, who may be reached at (973) 648-3696.

If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate disciplinary action.

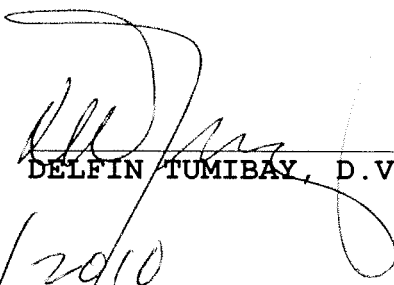
NEW JERSEY STATE BOARD OF
VETERINARY MEDICAL EXAMINERS

By:



LESLIE G. ARONSON
Executive Director

ACKNOWLEDGMENT: I, **DELFIN TUMIBAY, D.V.M.**, hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct that has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of **\$1,000.00** for failing to comply with the requirements of N.J.A.C. 13:44-4.9. I also agree to comply with all other requirements set forth in this settlement letter.



DELFIN TUMIBAY, D.V.M.

DATED:

April 6 / 2010

cc: Olga E. Bradford, Deputy Attorney General